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From:

Sent: Friday, September 13, 2013 4:13 PM

To:

Cc:

Subject: Boat Slip case

About a month ago, _____ did contact our office and asked for our advice on the cost of sale issue.

Here are the facts as we understand them (please let us know if we do not understand the facts correctly):

The Service seized a boat slip on _____. The boat slip was sold by PALS on _____. To be able to close on the sale of the boat slip the PALS paid harbor master management fee of \$ _____ on _____. The bill covered the period of _____ to _____.

The question as we understand it is: Whether the harbor master management fee is a cost of sale expense. If it is, shall the whole amount, paid by PALS in the amount of \$ _____, be deducted from the sale of the boat slip proceeds or the amount shall be prorated and amounts attributable to four (4) days in _____ (before the Service seized the property) and amount attributable to a period after _____ (after the PALS sold the boat slip) shall not be included into the cost of sale amounts?

Answer: _____ management fee paid by PALS is a cost of sale expense. IRM section 5.10.1.3.3.1 (1) states that storage costs and other miscellaneous fees can be cost of sale expenses. We believe that marina management fee is like a storage fee in a way. Also, as far as we understand, the marina bill includes electricity bill as well. That portion of the expense can be considered as a miscellaneous fee which can also be a cost of sale expense.

Another, harder question is how much of the total bill paid is a cost of sale expense. Is it a 100 % of the bill paid or a prorated amount that covers only the period during which the property was seized? In other words, shall the Service subtract the amounts attributable to the four (4) days in _____ and days from _____ (the date of sale) to _____ (the date of the bill) from the total bill paid to come to a number that will represent an expense of sale amount?

Answer: I.R.C. section 6342 (a)(1) allows to deduct expenses of sale from the amounts realized as a result of sale of taxpayer's property. Section 6341 provides that, "[t]he Secretary shall determine the expenses to be allowed in all cases of levy and sale." Treas. Reg. § 301.6341-1 states that "the district director shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses for protection and preservation of the property during the period subsequent to levy, as well as the actual expenses incurred in connection with the sale thereof." (Emphasis added).

Basically, expenses incurred "subsequent to levy" and "actual expenses" incurred in connection with the sale shall be allowed. The property was seized on [redacted] and was sold on [redacted]. All expenses incurred during this period are undoubtedly cost of sale expenses and shall be allowed as such. Nevertheless, I.R.M. section 5.10.4.7(4) allows PALS to exercise sound judgment when they are identifying the necessary expenditures and determining whether they can be charged as expenses of sale. The same section states that "expenses made to preserve the value of the property and prevent wasting may be incurred as an expense of sale". When we analyzed this question we believed that it was in the discretion of PALS to determine what expense and how much of it was attributed to the expense of sale. Because the PALS paid the whole bill and did not prorate, the PALS could have been exercising their discretion and sounds judgment in taking this decision. The payment of the bill might have facilitated the sale of the boat slip. Because the representative of PALS who executed the sale of the boat slip had since retired we were unable to verify these facts with him/her, but taken into consideration the amount of money at stake (based on our conversation with [redacted] the amount is really small) and based on the facts of this particular case (the bill was due on [redacted] and we don't believe the boat slip management company would have allowed to prorate the amounts due) we advised [redacted] that the full amount of expenses paid by PALS can be considered an expense of sale.

If you want to discuss this issue further or you disagree with our conclusion, please let us know.

Thanks.